

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

SYDNEY PAUL FERNANDEZ,

Defendant and Appellant.

C062358

(Super. Ct. No. SF112048B)

On May 3, 2009, Stockton Police Sergeant Kenneth Robinson responded to a family disturbance involving defendant Sydney Paul Fernandez and his three sisters. Driving off in a green Mustang, defendant yelled, "I'm going to get a gun and come back."

Sergeant Robinson drove by the same address on June 9, 2009, and saw defendant sitting in the driver's seat of a green Mustang parked in front of the residence. He radioed for assistance and followed the Mustang as defendant drove off. Defendant saw the patrol car, made a U-turn, and drove away.

Sergeant Robinson initiated a traffic stop on the Mustang. Officers searched the car after defendant consented and found a gun.

Defendant pled no contest to unlawful possession of a firearm. The court imposed a stipulated sentence of 16 months in state prison and awarded 25 days' presentence custody credit (17 actual and 8 conduct).

Defendant's sole contention on appeal is that the court should have applied the recent amendments to Penal Code section 4019 to the award of credits.¹

After filing the opening brief, defendant's appellate counsel sent a letter to the trial court requesting additional credits pursuant to Penal Code section 4019. The trial court subsequently increased defendant's conduct credits from 8 to 16 days, for a total of 33 days' presentence credit (17 actual and 16 conduct).

The trial court's action cured the only error claimed by defendant, rendering his appeal moot. (See *People v. Herrera* (2006) 136 Cal.App.4th 1191, 1198 ["[A]n action that originally was based on a justiciable controversy cannot be maintained on

¹ Defendant's opening brief was filed two days after this court's miscellaneous order No. 2010-002, filed March 16, 2010, in which we deemed any defendant to have raised the issue (without additional briefing) of whether amendments to Penal Code section 4019, effective January 25, 2010, apply retroactively to any pending appeal and entitle the defendant to additional presentence credits. We presume counsel was unaware of our order when the brief was filed.

appeal if all the questions have become moot by subsequent acts or events. A reversal in such a case would be without practical effect, and the appeal will therefore be dismissed'"].)

DISPOSITION

The appeal is dismissed.

ROBIE, J.

We concur:

HULL, Acting P. J.

BUTZ, J.